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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 98-112
FM Broadcast Stations.)	RM-9027
(Anniston and Ashland, Alabama,)	RM-9268
College Park, Covington and)	
Milledgeville, Georgia))	

To: Chief, Allocations Branch

REPLY COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"), by its attorneys, hereby submits these Reply Comments in the above-captioned proceeding. In its Comments, Cox established that the allotment to College Park, Georgia, proposed by WNNX License Investment Co. ("WHMA"), licensee of WHMA(FM), Anniston, Alabama, failed to satisfy the Commission's requirements for a first local service preference, and, in any event, offered only minimal public interest benefits. Cox also demonstrated that the current arrangement of allotments in Anniston and College Park, as well as the allotment of the first competitive and first truly full-time service to the underserved community of Covington, Georgia, would ensure the fair, equitable and efficient distribution of radio stations in the region. Two other broadcasters -- Preston W. Small, licensee of WLRR(FM), Milledgeville, Georgia ("WLRR") and Jefferson Pilot Communications Company ("Jefferson Pilot") -- presented similarly compelling arguments to the same effect. Two issues raised in the Comments filed in this proceeding warrant a response.

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I. The Comments Establish That College Park's Interdependence with the Atlanta Urbanized Area Precludes Awarding the Suburb a First Local Service Preference.

In its Comments, WHMA claimed that "College Park is in need of its own local radio station" due to its "independence as a community." WHMA also argued that the community of College Park, which abuts the City of Atlanta along its eastern boundary, is more deserving of an allocation than the relatively more rural communities of Anniston and Covington. Cox, WLRR and Jefferson Pilot all demonstrated the fallacy of these arguments with reliance on numerous Commission precedents and with citation to voluminous amounts of empirical data.

WHMA's Comments confirm that College Park cannot survive the *Tuck/KFRC* analysis demanded of any proposal that seeks the allocation of a radio station to a community located within an urbanized area.^{1/} Instead of submitting a detailed factual showing, WHMA can merely muster two facts in support of its allocation: the number of local governmental employees and the number of businesses allegedly located within the town's corporate limits. From these items alone, WHMA concludes that College Park "does not depend on Atlanta in any sense for its existence."

Even assuming that these two pieces of data constitute probative evidence, the Commission nonetheless must conclude that WHMA's paltry showing does not satisfy the searching inquiry demanded under the FCC's *Tuck/KFRC* line of cases. Significantly, however, WHMA's evidence is by no means probative. As noted in Cox's Comments, the size of College Park's government is significantly less than that of the community at issue in *KFRC*, in which the Commission determined that Richmond, California, did not deserve a first local service

^{1/} See Cox Comments at 4.

preference.^{2/} In addition, many of the businesses relied on by WHMA are *not* physically located in College Park. In any event, the majority of College Park's commercial establishments (and residents, for that matter) serve the fifty-six million travelers who pass through Hartsfield Atlanta International Airport each year rather than some independent, self-sufficient community.^{3/} At bottom, even the scant "evidence" put forth to demonstrate College Park's independence fails to support WHMA's suggestion that College Park functions independently of the City of Atlanta. When the Commission weighs this "evidence" against the long catalog of statistics and other evidence of close interdependence submitted by Cox, WLRR and Jefferson Pilot, the agency must conclude that the proposed College Park allocation presents the very abuse of the Commission's rules that *Huntington, Tuck, KFRC, Eatonton* and a dozen other decisions attempted to guard against.^{4/}

II. The Social Circle Counterproposal Is Preferable to the College Park Proposal.

WLRR counterproposes the reallocation of Channel 264A from Milledgeville to Social Circle, Georgia. As WLRR confirmed, Social Circle is an incorporated city located about fifty miles west of Atlanta that qualifies as a community for allotment purposes.^{5/} Because Social Circle does not yet have a local transmission service, WLRR's Social Circle counterproposal satisfies the Commission's third allotment priority.

^{2/} See *id.* at 6.

^{3/} See *id.* at 7-8; WLRR Comments at 16-17; Jefferson Pilot Comments at 7-9.

^{4/} See, e.g., Cox Comments at 4-10 and cases cited therein.

^{5/} WLRR Comments at 19. Rand McNally's *1998 Commercial Atlas and Marketing Guide*, at 301 and 305, further indicates that Social Circle, unlike College Park, has its own post office and ZIP code.

Under the Commission's allocation precedents, the proposed Social Circle allocation would yield a more preferential arrangement of allotments than a College Park allocation. The former would provide a first local service to a deserving community while the latter would result in the allocation of the twenty-ninth radio station to the Atlanta Urbanized Area. As WHMA concedes in its Comments, the Commission must grant a proposal that would satisfy the third allotment priority instead of a proposal that merely triggers the fourth allotment priority.^{6/}

Moreover, even if the Commission disregards the overwhelming evidence of College Park's interdependence with Atlanta and awards the suburb a first local service preference, precedent still favors the Social Circle counterproposal. In such a case, both proposed allotments initially trigger the third priority and, therefore, would be evaluated under the fourth priority -- other public interest factors. A grant of the College Park allocation would result in an unacceptable loss of service for about 659,000 individuals, many of whom would no longer be well-served.^{7/} In contrast, the Social Circle allotment would necessitate a service loss of less than one-thirteenth that figure, and *all* of WLRR's loss area would continue to receive at least five aural services.^{8/} In addition, relocating WHMA from Anniston to College Park would result in the addition of the twenty-ninth radio signal to the abundantly well-served Atlanta radio market, while relocating WLRR would provide Walton County with only its second local transmission service. The Social Circle counterproposal, therefore, would better serve the public interest goals of the Communications Act.

^{6/} See WHMA Comments at 2.

^{7/} *NPRM* at ¶ 9; *see also* Cox Comments at 14 ("even if the Commission were to credit the College Park Proposal with the gain that would result from the 'poor substitute' of the new allocations, the resulting "net loss" figure of 440,174 persons is equally fatal").

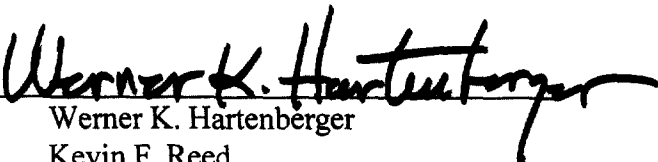
^{8/} See WLRR Comments at ¶ 33.

Conclusion

The Commission's statutory obligation to distribute radio signals fairly, equitably and efficiently among the communities at issue in this proceeding requires it to reject WHMA's latest attempt to abandon its community of license in favor of the already crowded Atlanta radio market. Instead, the Commission should permit the institution of the first local service to the deserving community of Social Circle or the provision of the first local FM and first competitive service to the equally deserving community Covington. In this way, the Commission will prevent the massive service disruptions proposed by WHMA while ensuring that residents of relatively rural areas in Alabama and Georgia enjoy some degree of competitive radio service available in the more densely populated areas of the country. Accordingly, Cox respectfully urges the Commission to grant the Covington proposal or Social Circle counterproposal and deny the College Park proposal.

Respectfully submitted,

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September 15, 1998

CERTIFICATE OF SERVICE

I, Vanese E. Hargrove, hereby certify that a true and correct copy of the foregoing "Reply Comments of Cox Radio, Inc." was sent on this 15th day of September 1998, via first-class United States mail, postage pre-paid, to the following:

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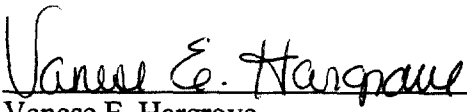
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